

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

IN RE: )  
 )  
George Peake , ) CASE NO. 18 B 16544  
 ) HON. Deborah Thorne  
 ) CHAPTER 13  
 )  
DEBTOR. )

**NOTICE OF MOTION**

TO: Marilyn o Marshall, Chapter 13 Trustee, 224 South Michigan Ave., STE 800, Chicago, IL 60604;

David Holtkamp, Counsel for the City of Chicago, Department of Law, 121 N. LaSalle St., Ste. 400, Chicago, Illinois 60602;

Harris & Harris, C/O City of Chicago, 111 W. Jackson Blvd., Suite 600, Chicago, IL 60604

City of Chicago, P.O Box 71429, Chicago, IL 60694;

Anna Valencia, City Clerk, 121 N. LaSalle Street, Room 107, Chicago, IL 60602;

See attached service list;

Please take notice that on June 27, 2018, at 9:30 a.m., I shall appear before the Honorable Judge Deborah Thorne in Courtroom 613 in the Federal Dirksen Building, 219 S. Dearborn Street, Chicago, Illinois and present the attached motion and you may appear if you so choose.

**PROOF OF SERVICE**

The undersigned, an attorney, certifies that he transmitted a copy of their notice and the attached motion to the attached service list via regular U.S. Mail with postage prepaid from the mailbox located at 20 S. Clark Street, Chicago, IL 60603 on June 20, 2018.

/s/ Aaron Weinberg and John Wonais  
Attorneys for Debtor  
The Semrad Law Firm, LLC  
20 S. Clark Street, 28<sup>th</sup> Floor  
Chicago, IL 60603  
(312) 256-8516

Label Matrix for local noticing

0752-1

Case 18-16544

Northern District of Illinois

Chicago

Wed Jun 13 09:24:04 CDT 2018

City of Chicago - Parking and red Light Tick

121 N. LaSalle Street

Chicago, IL 60602-1202

U.S. Bankruptcy Court

Eastern Division

219 S Dearborn

7th Floor

Chicago, IL 60604-1702

ComEd

1919 Swift Drive

Oak Brook, IL 60523-1502

CBE GROUP

1309 Technology Pkwy

Clarksville, IA 50619

GO FINANCIAL

Po Box 29018

Phoenix, AZ 85038-9018

IRS 1

PO Box 7346

Philadelphia, PA 19101-7346

Peoples Gas

PO BOX 2968

Milwaukee, WI 53201-2968

Provident Hospital

500 E 51st St

Chicago, IL 60615-2494

R&amp;R Country Motors

300 Dixie Hwy

Beecher, IL 60401-3626

St. Bernard Hospital

326 W 64th St

Chicago, IL 60621-3146

State of IL Department of Revenue

PO Box 19035

Springfield, IL 62794-9035

US Cellular

c/o: American Infosource LP as agent

4515 N Sante Fe Ave

Oklahoma City, OK 73118-7901

George Peake

4841 S Langley

Apt 2N

Chicago, IL 60615-1515

Marilyn O Marshall

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219 S Dearborn St

Room 873

Chicago, IL 60604-2027

End of Label Matrix

Mailable recipients 16

Bypassed recipients 0

Total 16

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

IN RE:	)	
	)	CASE NO. 18 B 16544
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	)	CHAPTER 13
	)	
DEBTOR.	)	

**MOTION FOR SANCTIONS AND TURNOVER**

NOW COMES the Debtor, George Peake, by and through Debtor's attorneys, The Semrad Law Firm, LLC, and moves ther Honorable Court to enter an order for sanctions and turnover against the City of Chicago and state as follows:

1. That this Court has jurisdiction pursuant to 11 U.S.C. §362.
2. That on or about May 31, 2018, Debtor's vehicle, a 2007 Lincoln MKZ ("Vehicle"), plate number Y729731, was booted by the City of Chicago.
3. That on June 1, 2018, Debtor's vehicle was towed and impounded by the City of Chicago.
4. That GO Financial is a lienholder on Debtor's Vehicle and owed approximately \$7,312.79.
5. That on June 9, 2018, the Debtor filed a petition for relief pursuant to Chapter 13, Title 11 of the United States Code.
6. That on June 9, 2018, the Debtor filed a proposed plan treating the City of Chicago and Go Financial as a secured creditor under Section 3.2. *See* Exhibit A
7. That the Debtor properly listed the City of Chicago as a creditor on her bankruptcy schedules. *See* Exhibit B.
8. That on June 13, 2018, the Clerk of the Court sent notice of Debtor's bankruptcy filing to all creditors including the City of Chicago and on June 16, 2018, notice of Debtor's

- proposed plan. See Exhibit C.
9. That on June 15, 2018, Debtor's Counsel contacted the City of Chicago seeking release of the vehicle. After contacting the City, the City of Chicago filed a secured proof of claim in the amount of 5393.27. See Exhibit D.
  10. That a significant portion of the alleged parking ticket debt owed to the City of Chicago accrued as a result of other individuals driving the Debtor's vehicle.
  11. That at all times relevant hereto, the Debtor used the vehicle to drive to work at the Amazon Facility in Joliet, Illinois , approximately 45 miles from his residence on the southside of Chicago.
  12. That without said vehicle, the Debtor is paying others to drive him to work during the weekdays and to otherwise to get around on the weekend.
  13. That to date, the City of Chicago has not released Debtor's vehicle and failed to file any motion before the Court. That the City will only release vehicles upon debtors, including Mr. Peake, satisfying their specific demands.
  14. That the City's new policy restricts debtors to two options for releasing impounded vehicles while in bankruptcy: (1) wait until a plan is confirmed that treats the City's claim in full as a secured creditor with a 60-month set, or (2) provide the same treatment in the plan as above but pay upwards of \$1,250.00 up front to release the vehicle prior to confirmation.
  15. That it is well established that in the Seventh Circuit, pursuant to *Thompson v. GMAC, LLC*, 566 F.3d 699 (7th Cir. 2009) (hereinafter "*Thompson*"), the Bankruptcy Code (hereinafter "Code") "requires that a creditor immediately return a seized asset in which a debtor has an equity interest to the debtor's estate upon her filing of Chapter 13

- bankruptcy.” *Id.* at 700. Further, Section 542(a) of the Code mandates that “turnover of a seized asset is compulsory.” *Id.* at 704. “The failure to fulfill their duty, regardless of whether the original seizure was lawful, constitutes a prohibited attempt to ‘exercise control over property of the estate’ in violation of the automatic stay.” *Knaus v. Concordia Lumber Co., Inc.*, 889 F.2d 773, 775 (8th Cir.1989) (“*In re Knaus*”).
16. That rather than following the Seventh Circuit’s holding in *Thompson v. General Motors Acceptance Corporation, LLC*, 566 F.3d 699 (7th Cir. 2009) (“*Thompson*”), the City of Chicago continues to take the position that the opinion of Judge Cassling in *In re Avila*, 566 B.R.5588 (Bankr. N.D. Ill. 2017) is binding precedent in all bankruptcy courts in the Northern District of Illinois, including this one, and supports their new policy in not releasing vehicles despite not taking any action in the bankruptcy proceeding whatsoever.
17. That at least three recent decisions have found such conduct and failure to release vehicles by the City in direct contradiction with *Thompson*, including *In re: Robbin L. Fulton, Debtor.*, 18 BK 02860, 2018 WL 2570109, at \*9 (Bankr. N.D. Ill. May 1, 2018); *In re Howard*, 584 B.R. 252, 258 (Bankr. N.D. Ill. 2018); and *In re Cross*, 18 AP 00154, 2018 WL 2392853, at \*9 (Bankr. N.D. Ill. May 25, 2018), each holding the City to not be found within the ambit of Section 362(b)(3), or have enacted a valid ordinance creating a possessory lien within their home rule authority.
18. That even should a valid possessory lien be found, continuous possession of collateral to secure said lien is not an exception to the automatic stay or within an exception to the stay because an *involuntary* turnover of possession does *not* result in a loss of the underlying possessory lien. *See In re WEB2B Payment Sols., Inc.*, 488 B.R. 387, 394

(Bankr. App. 8th Cir. 2013); *See also Davis v. Sewell*, 696 S.W.2d 247, 248 (1985) (where a horse temporarily escaped because of a downed fence, it was “not the kind of loss of possession which will defeat” an agister's lien).

19. That because turnover is compulsory upon filing pursuant to *Thompson*, subject to the filing of an emergency motion for relief – which the City has not done – surrendering possession of impounded vehicles is *involuntary* thereby not resulting in a loss of any purported possessory lien or invoking any exception to the stay.
20. That the City of Chicago’s failure to release Debtor’s vehicle constitutes a violation of the Automatic Stay enumerated in 11 U.S.C. §362(a).
21. The City of Chicago is not irreparably harmed nor are their substantive rights being modified or impaired by the automatic stay. Like thousands of other creditors, the City of Chicago is afforded various remedies under the Code and have failed to utilize them or take any action in this case.
22. Debtor respectfully requests this Court to enter an order requiring the City of Chicago to immediately release Debtor’s vehicle.
23. At all times relevant hereto, Debtor has done nothing to provoke the City of Chicago to continue to hold Debtor’s vehicle.

WHEREFORE, Debtor, George Peake, prays this Honorable Court for the following relief:

- A. That this Honorable Court enter an Order directing the City of Chicago to turn over the 2007 Lincoln MKZ to the Debtor; and
- B. For any further relief as the Court may deem fair and proper.

Respectfully Submitted,

/s/ Aaron Weinberg and John Wonaiss

Attorneys for Debtor

The Semrad Law Firm, LLC

20 S. Clark Street, 28<sup>th</sup> Floor

Chicago, IL 60603

(312) 256-8516